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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,363

09/30/2003

Pierre Colin

11091

5978

26890

7590

02/26/2009

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EXAMINER

AHMED, SALMAN

ART UNIT

PAPER NUMBER

2419

MAIL DATE

DELIVERY MODE

02/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/675,363</p>	<p>Applicant(s) COLIN ET AL.</p>	
	<p>Examiner SALMAN AHMED</p>	<p>Art Unit 2419</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Salman Ahmed/
Examiner, Art Unit 2419

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant's arguments see pages 7-11 of the Remarks section, filed 2/16/2009, with respect to the rejections of the claims have been fully considered and are not persuasive.

Applicant argues (see pages 7-8, last-first paragraphs) that "Suitable Packet" message from Gateway B to Gateway A is not based on messages from Modem B or on messages from Gateway A. It is based on a failure to timely receive packet 312 from Gateway A. Thus, the situation in paragraph [0228] does not satisfy element (e) of independent claims 1, 9, and 17 because the second gateway (i.e., Gateway B) does not (e) generate pause messages based at least in part on the reception of acknowledgement messages by the second gateway.

However, Examiner respectfully disagrees with the Applicant's assertion. The cited prior art do indeed teach the cited limitations. Specifically, Somekh further teaches in figure 9C, paragraph 0227, in some embodiments of the invention, when gateway 36B finally receives packet 312, it transmits a frame 314 with values taken from packet 312. When gateway 36B receives a frame 316 generated responsive to this frame 314, it transmits packet 318 to gateway 36A and transmits response frame 320 to modem 32B.

Clearly, the message flows as follows:

- 1) Modem A sends message 310 to Gateway A,
- 2) Gateway A sends 312 message to Gateway B,
- 3) Gateway B sends 314 to Modem B,
- 4) Modem B responses with message 316 to Gateway B,
- 5) Gateway B responses with 318 to Gateway, and
- 6) Gateway A responses with 322 to Modem A.

As such, Examiner respectfully disagrees with the Applicant's assertion that Somekh does not satisfy element (e) of independent claims 1, 9, and 17 because the second gateway (i.e., Gateway B) does not (e) generate messages based at least in part on the reception of acknowledgement messages by the second gateway. Furthermore, Somekh disclose all the subject matter of the claimed invention with the exception of: o Pause message. Rom from the same or similar fields of endeavor teaches the use of: Pause frame is provided to an information packet source by a downstream destination to inhibit transmission of information packets such as information frames by the information packet source to the downstream destination for a specified period of time (see Rom col. 5 lines 8-12). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that (see page 8) Gateway B "does not transmit frames 318 responsive to these frames 316" is a direct quote from Somekh. See Somekh paragraph [0226], lines 10-12 ("Gateway 36B does not respond to these frames 316 with response frame 320 and does not transmit packets 318 responsive to these frames 316" (emphasis added)).

However, in response Examiner submits that Somekh discloses various scenerios in various paragraphs. A direct quote also states in paragraph 0027, "in some embodiments of the invention, when gateway 36B finally receives packet 312, it transmits a frame 314 with values taken from packet 312. When gateway 36B receives a frame 316 generated responsive to this frame 314, it transmits packet 318 to gateway 36A and transmits response frame 320 to modem 32B;" thus clearly stating the following scenario:

- 1) Modem A sends message 310 to Gateway A,
- 2) Gateway A sends 312 message to Gateway B,
- 3) Gateway B sends 314 to Modem B,
- 4) Modem B responses with message 316 to Gateway B,
- 5) Gateway B responses with 318 to Gateway, and
- 6) Gateway A responses with 322 to Modem A.

Thus meeting the cited limitations.

Examiner further submits in response to cited paragraphs in office actions (see page 9) Examiner has cited particular columns, line numbers and/or paragraphs in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

As such, claims 1-24 stand rejected..